

**INTHEUNITEDSTATESDISTRICTCOURT
FORTHEEASTERNDISTRICTOFPENNSYLVANIA**

Inthematterof:

WLODZIMIERZS.CHOJECKI,

Debtor.

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No.99-4850

ONAPPEAL

BankruptcyNo.99-18145

ORDER&MEMORANDUM

ORDER

ANDNOW ,towit,this22 nddayofMay2000,uponconsiderationoftheappealfiledby JosephT.HanniganfromafinalorderoftheUnitedStatesBankruptcyCourt,Scholl,J.,dated August5,1999,andtherelatedsubmissionoftheparties(Docs.6,8,11,14and15)¹, **ITIS ORDERED**thattheOrderoftheBankruptcyCourtdatedAugust5,1999,which(1) permanentlyenjoinedJosephT.Hanniganfromassistinganypartiesinfilingbankruptcycases andfromcharginganypersonsforassistingtheminfilingbankruptcycasesinanyjurisdictionin Pennsylvania,and(2)orderedJosephT.HannigantorefundtoWlodzimierzChojewski,thede debtor inbankruptcy,the\$379feepaidforservicesrendered,is **AFFIRMEDINPARTand VACATEDINPART** ,andthecaseis **REMANDED**totheBankruptcyCourtforfurther proceedingsinaccordancewiththisOrderandtheattachedMemorandum,asfollows:

1. ThatpartoftheBankruptcyCourt’sOrderfindingthatJosephT.Hannigan

¹Documents6and8areidentical;documents14and15areidentical.

engaged in the unauthorized practice of law and directing him to refund \$379 to Wlodzimierz Chojecki is **AFFIRMED**;

2. That part of the Bankruptcy Court's Order permanently enjoining Joseph T. Hannigan from assisting any parties in filing bankruptcy cases and from charging any persons for assisting them in filing bankruptcy cases in any jurisdiction in Pennsylvania is **VACATED**;

3. The case is **REMANDED** to the Bankruptcy Court for issuance of a more narrowly tailored injunction that prohibits Hannigan from engaging in the unauthorized practice of law in Pennsylvania while allowing him to provide bankruptcy petition preparation services that do not constitute the unauthorized practice of law.

MEMORANDUM

I. FACTS

John T. Hannigan ("Hannigan") is the owner and operator of U-File Discount Document Centers of America, Inc. ("U-File America"), a company in the business of providing routine document preparation services to the public on a variety of legal matters, such as uncontested divorces, homesteads and deed transactions, incorporation, and bankruptcy petitions. Hannigan has expanded his company by means of franchising, and there are currently seventeen U-File America franchises in operation. Diane Lopes ("Lopes") is a franchisee who operates U-File Discount Document Centers of New Bedford ("U-File New Bedford") in New Bedford, Massachusetts.

In or about June 1999 Wlodzimierz Chojecki ("debtor") came to Lopes and U-File New Bedford seeking to clear up a large indebtedness to the IRS and the state of Massachusetts. On

Lopes' recommendation, debtor decided to seek bankruptcy relief under the liquidation provisions of Chapter 7 of the Bankruptcy Code. As was the customary practice within the U-File America franchise system in bankruptcy matters, Lopes, as a franchisee, did not prepare the actual documents in debtor's bankruptcy case. Rather, Lopes met with debtor, who completed a questionnaire disclosing various financial data. Lopes then faxed the completed questionnaire to Hannigan who used the information to prepare the bankruptcy petition and schedules and sent them back to Lopes to be signed by debtor. Hannigan never met or spoke to debtor. On June 25, 1999 debtor filed his pro se voluntary petition for bankruptcy under Chapter 7.

On July 9, 1999 debtor filed Local Bankruptcy Form 2016-4, listing Lopes as the person or business that assisted him in filing or preparing papers for his bankruptcy case. The Bankruptcy Court sua sponte set a show cause hearing to determine the nature of Lopes' bankruptcy petition preparation activities. On July 28, 1999 Hannigan filed a Fee Application and Response to the show cause order on behalf of himself, Lopes, U-File America, and U-File New Bedford, seeking \$379 for document preparation services.

On August 5, 1999, after a show cause hearing, the Bankruptcy Court issued a final order in which it concluded that Hannigan, Lopes, U-File America and U-File New Bedford had all engaged in the unauthorized practice of law in connection with debtor's bankruptcy. In the order the Bankruptcy Court permanently enjoined Hannigan, Lopes, U-File America and U-File New Bedford, and "any persons or entities acting in concert with them," "from assisting any parties in filing bankruptcy cases and from charging any persons for assisting them in filing bankruptcy cases in any jurisdiction in Pennsylvania." The Bankruptcy Court also found Hannigan, Lopes,

U-File America and U-File New Bedford jointly and severally liable to refund the \$379 paid to them by debtor for the services provided, and ordered them to provide evidence to the Bankruptcy Court and the United States Trustee's office of the refund to debtor.

Hannigan, an non-attorney, filed a Notice of Appeal on September 2, 1999, purportedly on behalf of himself, Lopes, U-File America and U-File New Bedford; no other Notice of Appeal has been timely filed. In response to Hannigan's appellate brief, the United States Trustee filed a brief urging this Court to affirm the Bankruptcy Court's Order, pursuant to its obligation to supervise the administration of bankruptcy cases. See 28 U.S.C.A. § 586(a)(3) (West Supp. 1999).

II. DISCUSSION

As an initial matter, the Court notes that as a non-attorney Hannigan may represent himself on appeal. However, he may not act as an attorney for other individuals or for a corporation in federal court. See United States v. Stepard, 876 F.Supp. 214, 215 (D. Ariz. 1994) ("Although a non-attorney may appear in propria persona on his own behalf, that privilege is personal to him and he has no authority to appear as the attorney for anyone other than himself"); Rowland v. California Men's Colony, 506 U.S. 194, 202 (1993) (noting that the lower courts have uniformly held that 28 U.S.C.A. § 1654, which provides that "parties may plead and conduct their own cases personally or by counsel," does not allow corporations, partnerships, or associations to appear in federal court other than through a licensed attorney); 28 U.S.C.A. § 1654 (West 1994). Therefore, the Court has before it only the pro se appeal of Hannigan. The Bankruptcy Court's final order will not be reviewed with respect to Lopes, U-File America or U-File New Bedford.

When sitting as an appellate court, the district court must apply a “clearly erroneous” standard to review the bankruptcy court’s findings of fact and a de novo standard to review its conclusions of law. See In re Siciliano, 13 F.3d 748, 750 (3d Cir. 1994).

The Bankruptcy Court, Scholl, J., concluded that Hannigan engaged in the unauthorized practice of law, in violation of Pennsylvania law, with respect to the manner in which he assisted debtor file Chapter 7 bankruptcy in or about June, 1999. See 42 Pa. Con. Stat. Ann. § 2524(a) (West Supp. 1999) (making it a misdemeanor for any non-attorney to practice law). This Court agrees with that determination.

There is evidence in the record that Hannigan classified debtor’s debts without ever meeting or speaking with debtor. See Aug. 5, 1999 Hearing Transcript (“HT”), at 42-43, 64-65. Indeed, Hannigan admits that he acted alone in categorizing debtor’s priority and nonpriority debt on Schedules E and F of debtor’s bankruptcy petition. See Brief of Appellant (Doc. 6/8, filed Oct. 29, 1999), at 5-6. That act by itself was sufficient to warrant the Bankruptcy Court’s conclusion that Hannigan engaged in the unauthorized practice of law. See Patton v. Scholl, 1999 WL 431095*7-8 (E.D. Pa. June 1999) (categorization of debtor’s obligations constitutes unauthorized practice of law in bankruptcy matter).

Hannigan contends that his conduct was permissible because he is a “bankruptcy petition preparer,” as that term is defined in 11 U.S.C.A. § 1110 (West Supp. 2000). That statute allows someone in Hannigan’s position to assist persons contemplating the filing of a bankruptcy petition by performing certain limited tasks. Permissible services include selling blank bankruptcy forms to debtors and copying or typing on those forms based upon the handwritten or

printed information provided by debtors. Patton, 1999 WL 431095 at *11. However, the statute does not permit bankruptcy petition preparers to engage in the unauthorized practice of law, as Hannigan did in this case. See 11 U.S.C.A. § 110(k) (West Supp. 2000). Accordingly, the Bankruptcy Court's determination that Hannigan engaged in the unauthorized practice of law is affirmed.

Once a court determines that a non-attorney has engaged in the unauthorized practice of law, it may order disgorgement of all fees resulting from the unlawful practice. See Patton, 1999 WL 431095 at *12. Accordingly, the Bankruptcy Court's Order that Hannigan disgorge the \$379 in fees paid by debtor was appropriate, and that part of the Order is affirmed.

In addition, upon determining that a non-attorney has engaged in the unauthorized practice of law, a court may enjoin the unlawful practice. See 11 U.S.C.A. §§ 110(j)(2)(i)(III) and (k) (West Supp. 2000) (allowing injunctions against "bankruptcy petition preparers" as appropriate to prevent "fraudulent, unfair or deceptive conduct"); 42 Pa. Con. Stat. Ann. § 2524(c) (West Supp. 1999); Patton 1999 WL 431095 at *9-10. An injunction is appropriate when it appears that without court intervention the illegal conduct would continue to occur. See Patton 1999 WL 431095 at *10. However, an injunction must be narrowly tailored such that it will not needlessly proscribe otherwise lawful conduct. Id. at *10-12.

The Bankruptcy Court below permanently enjoined Hannigan "from assisting any parties in filing bankruptcy cases and from charging any persons for assisting them in filing bankruptcy cases in any jurisdiction in Pennsylvania." There is evidence in the record that Hannigan might continue the specific type of unauthorized practice of law determined by the Bankruptcy Court

without judicial intervention. See, e.g., Brief of Appellant, at 5 (statement by Hannigan that he has “successfully classified debt in this manner in hundreds of cases”). Thus, an injunction ordering Hannigan to desist from the unauthorized practice of law was appropriate.

However, the Court concludes that the scope of the Bankruptcy Court’s injunction was too broad. While the Bankruptcy Court properly tailored the injunction geographically to proscribe Hannigan from engaging in the unauthorized practice of law in Pennsylvania, see Patton, 1999 WL 431095 at *10, the injunction also prohibits activities that do not constitute the unauthorized practice of law, see id. at *11 (noting, for example, that selling blank bankruptcy forms and providing typing services to debtors is not the practice of law). As was the case in Patton, there is nothing in the record before the Court to indicate that Hannigan would attempt to overstep the restrictions imposed in a more tailored injunction. See, e.g., HT, at 5-6, 60-64 (noting that Hannigan does not wish to “step outside the law” and describing attempts by Hannigan to seek clarification on the legality of his business practices). Moreover, if he does, that issue may be examined in future cases. See Patton, 1999 WL 431095 at *11.

Thus, the Bankruptcy Court’s injunction is vacated to the extent it enjoins activities that do not constitute the unauthorized practice of law. The case is remanded to the Bankruptcy Court for issuance of a more narrowly tailored injunction in accordance with this Memorandum and Order.

The Bankruptcy Court’s revised injunction may prohibit Hannigan from engaging in the unauthorized practice of law by proscribing conduct including, but not limited to: “(1) advising his clients which Chapter of bankruptcy they should elect; (2) describing the different Chapters

of bankruptcy to his clients; (3) assisting his clients in completing bankruptcy petitions and schedules, by categorizing debts or contracts and selecting exemptions; (4) defining bankruptcy terms for his clients; and (5) correcting perceived errors or omissions on his clients' bankruptcy petitions." Id. at *12. However, any injunction issued by the Bankruptcy Court must be limited in such a manner that Hannigan will not be prohibited from engaging in any conduct that does not constitute the unauthorized practice of law.

III. CONCLUSION

For all the foregoing reasons, the final order of the Bankruptcy Court, dated August 5, 1999, is affirmed in part and vacated in part, and the case is remanded to the Bankruptcy Court for further proceedings consistent with this Memorandum and Order.

BY THE COURT:

JANE DUBOIS, J.